

# Exhibit C

Lavery, MD., Kevin T. Vs. Pursuant Health, Inc.

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN T. LAVERY, M.D.,

Case No:

2:22-cv-10613-BAF-KGA

Plaintiff,

vs.

PURSUANT HEALTH, INC.,

Defendant.

VIDEO-RECORDED DEPOSITION OF BART FOSTER  
January 13, 2023

PURSUANT TO WRITTEN SUBPOENA and the appropriate rules of civil procedure, the video-recorded deposition of Bart Foster, called for examination by the Defendant, was taken at Hotel Boulderado, 2115 13th Street, Boulder, Colorado, commencing at 10:48 a.m. on January 13, 2023, before Jennifer Bajwa Melius, Verbatim Stenographic Reporter and Registered Professional Reporter.

1 not an issued patent?

2 A. Correct.

3 Q. When you entered into the letter of  
4 intent with Dr. Lavery, did you have the objective of  
5 obtaining any other intellectual property from  
6 Dr. Lavery, other than his issued patent?

7 A. Maybe a little strategic guidance or  
8 consultation because he's an ophthalmologist.

9 Q. Did you ultimately enter into a  
10 consulting agreement with Dr. Lavery in order to  
11 obtain that strategic guidance and consultation?

12 A. We did. We did.

13 Q. Was there any other specific  
14 intellectual property that you hoped to obtain from  
15 Dr. Lavery, other than his issued patent?

16 A. No, not that I'm aware of.

17 MR. BUSH: All right. Let's go off the  
18 record. I'm at a great stopping place for lunch.

19 THE VIDEOGRAPHER: We are going off the  
20 video record at 12:49 p.m.

21 (Recess from 12:49 p.m. to 1:58 p.m.)

22 (Mr. Jesser was not present.)

23 THE VIDEOGRAPHER: This is Media  
24 Number 2 in the continuing deposition of Bart Foster.  
25 We are back on the record at 1:58 p.m.

1 A. Yes.

2 Q. -- in connection with the contribution  
3 agreement?

4 Can you describe what sorts of services  
5 or information Dr. Lavery provided to SoloHealth in  
6 connection with his performing the consulting  
7 agreement we've marked as Exhibit 29?

8 A. Can you repeat the question?

9 Q. Yeah. Can you remember what services or  
10 other information that Dr. Lavery might have provided  
11 to SoloHealth after execution of the consulting  
12 agreement and during Dr. Lavery's performance of the  
13 consulting agreement?

14 A. Just likely general consultation, likely  
15 discussions around potential business model. Yeah.

16 Q. You say likely he provided potential  
17 business model options?

18 A. Correct.

19 Q. Do you remember any specific business  
20 model options that he provided to SoloHealth in  
21 performing the consulting agreement?

22 A. It would have been just a referral --  
23 you know, referral model or what doctors -- how  
24 doctors were -- ophthalmologists would, you know,  
25 perceive the units or potentially with the American

1 Optometric Association, but nothing technical.

2 MR. INOSENICIO: Joel?

3 MR. BUSH: Yes, sir.

4 MR. INOSENICIO: Before we go forward  
5 further, can we have Peter identify himself and his  
6 role?

7 MR. BUSH: Yes. He's a board member of  
8 Pursuant Health. I'll let him introduce himself.

9 MR. KRIVKOVICH: Yeah. Hi. Peter  
10 Krivkovich, board member of Pursuant Health, and I've  
11 been on the board for -- I forget the exact date, but  
12 for a while. Current all the way back to when Bart  
13 was operating CEO.

14 MR. BUSH: And --

15 MR. INOSENICIO: Thank you. I just want  
16 the record to reflect that we had someone join the  
17 deposition and the person's role.

18 Joel, are they -- is Peter appearing as  
19 the corporate representative today or . . .

20 MR. BUSH: Peter is appearing as a  
21 corporate rep. John Jesser had to depart.

22 MR. INOSENICIO: Okay.

23 MR. BUSH: And so Peter is in lieu of  
24 John Jesser's participation.

25 MR. INOSENICIO: Okay. Not a problem.

1 Peter, nice to meet you.

2 MR. KRIVKOVICH: Nice to meet you.

3 Q. (By Mr. Bush) Mr. Foster, you describe  
4 this referral model about -- from Dr. Lavery about  
5 what doctors -- what ophthalmologists would be  
6 thinking.

7 Was this information provided to  
8 SoloHealth by Dr. Lavery in any tangible form?

9 A. There may have been emails or -- but,  
10 no, I wouldn't think any documents of material  
11 importance.

12 Q. Other than the referral model that  
13 you've described that Dr. Lavery might have provided  
14 to SoloHealth in connection with performing the  
15 consulting agreement, can you think of anything else  
16 that Dr. Lavery provided to SoloHealth in performing  
17 the consulting agreement?

18 A. Potentially vendors to work with or  
19 consultants. Maybe things on the regulatory path or  
20 clinical validation, eye health information related to  
21 some of the content, perhaps, in a kiosk.

22 Q. And all of these things that you  
23 described including this referral model, did  
24 Dr. Lavery characterize any of these things as trade  
25 secrets during that time period?

1 A. Not outside of what would be considered  
2 SoloHealth property.

3 Q. And what do you mean by that?

4 A. There was no mention of, "Hey, this is a  
5 trade secret that's mine," or anything like that. It  
6 was more we would just have conversations.

7 Q. In other words, Dr. Lavery provided  
8 information to you, but he didn't label it as a trade  
9 secret?

10 A. Correct.

11 Q. Do you have a memory of Dr. Lavery  
12 providing any sort of demonstration video to  
13 SoloHealth in connection with his performing  
14 consulting services, under the consulting agreement we  
15 marked as Exhibit 29?

16 A. What type of video?

17 Q. Demonstration --

18 A. I don't --

19 Q. -- videos.

20 A. A demonstration of what?

21 Q. Dr. Lavery has alleged that he provided  
22 a demonstration video about the kiosk, and I'm asking  
23 whether you remember anything about a demonstration  
24 video prepared by Dr. Lavery that he provided to  
25 SoloHealth.

1 know, late 2013 probably, if I had to guess. It  
2 wasn't in the first five years.

3 Q. And the idea of putting retinal cameras  
4 into the device, was that recommendation provided to  
5 you in any tangible form, or was this emails and  
6 informal conversations?

7 THE STENOGRAPHER: Formal or informal?

8 MR. BUSH: Informal.

9 A. I would say the latter. There was  
10 likely some emails and some communication. I don't  
11 recall any documents that were produced.

12 Q. (By Mr. Bush) After the execution of  
13 the contribution agreement, did you undertake to  
14 modify the kiosk as it had been developed?

15 Did you undertake to modify it in any  
16 way in order to account for anything that you had  
17 received from Dr. Lavery?

18 A. Possibly. Not sure.

19 Q. And when you say "possibly," what are  
20 you potentially referring to?

21 A. Well, we would talk frequently. And  
22 there was all kinds of things we talked about and  
23 ideas, so I can't be certain of that.

24 Q. So sitting here today, can you identify  
25 any specific modification to the kiosk that was



1 stressing the importance of putting a retinal camera  
2 into the device.

3 A. Uh-huh.

4 Q. Did Dr. Lavery characterize that idea on  
5 his part as a trade secret?

6 A. No.

7 Q. From your perspective, did Dr. Lavery's  
8 recommendation of putting a retinal camera into the  
9 device, was that a follow-on idea from the ideas  
10 embedded in his patent?

11 A. Likely.

12 Q. Do you remember at any time Dr. Lavery  
13 characterizing anything at all to you as a trade  
14 secret that was owned by Dr. Lavery?

15 A. I'm not sure.

16 Q. Do you remember either way --

17 A. No.

18 Q. -- Dr. Lavery using the word "trade  
19 secret" in his communications --

20 A. I'm sure --

21 Q. -- with you?

22 A. -- he used that word, yes. But in what  
23 context, I have no idea.

24 Q. Let's look at 31.

25 (Exhibit Number 31 was marked.)

1 information is being conveyed in these pages about the  
2 SoloHealth business model as of February 2008?

3 A. How if you can educate people on the  
4 importance of eye health and visual acuity needs, that  
5 you can grow the overall market and drive revenue.

6 Q. And this -- these are business model  
7 concepts for SoloHealth that you prepared?

8 A. That's correct.

9 Q. Did anybody assist you in your  
10 preparation of this business model planning --

11 A. Many.

12 Q. -- for SoloHealth?

13 A. Many.

14 Q. And who helped you?

15 A. Stephen Kendig, maybe Peter Krivkovich,  
16 I don't know. You know, whoever the advisory board  
17 members were. There's a guy, Gary Gerber, some of the  
18 early investors likely. Yeah. It was very  
19 collaborative. Just asked a lot of questions, so I'm  
20 sure there were many people that provided input.

21 Q. Did Dr. Lavery provide input to you in  
22 his performing his responsibilities under the  
23 consulting agreement?

24 A. Yeah. Likely.

25 Q. Do you remember any specific

1 contributions from Dr. Lavery in connection with his  
2 performance of the consulting agreement?

3 A. Not specific. It might have been market  
4 size or how many ophthalmologists there were or an  
5 ophthalmologist's role versus an optometrist's role,  
6 things like that.

7 Q. I'll give you a document we've marked as  
8 Exhibit 33.

9 (Exhibit Number 33 was marked.)

10 Q. (By Mr. Bush) Do you recognize the  
11 document we've marked as Exhibit 33, Mr. Foster?

12 A. I do.

13 Q. And can you identify Exhibit 33 for the  
14 record?

15 A. It's a thank you note to Andrea Saia,  
16 who was current CEO of CIBA Vision on April 14 of  
17 2008.

18 Q. And what was your reasoning in sending  
19 this thank you note to Andrea Saia?

20 A. To build rapport so we could get the IP  
21 signed over from CIBA Vision.

22 Q. Do you remember when you received the IP  
23 from CIBA Vision?

24 A. I don't.

25 Q. And you're referring to the patent --

1 Q. When you say "I don't know," is it that  
2 you don't remember making a modification to the kiosk  
3 to account for any information from Dr. Lavery?

4 A. Yeah.

5 MR. INOSENICIO: I'm going to object.  
6 You're assuming the fact that it would have had to  
7 have been modified at some point to include  
8 information from Dr. Lavery.

9 And he's already testified he doesn't  
10 know.

11 MR. BUSH: I'm asking whether he  
12 remembers, but your objection is noted.

13 Q. (By Mr. Bush) Do you remember,  
14 Mr. Foster, making any modifications to the kiosk in  
15 late 2008 or early 2009 --

16 A. There were -- there were a ton of  
17 modifications made.

18 Q. I need to finish my question so that our  
19 record is clear, and I apologize for that.

20 And I'm asking specifically for your  
21 memory about any modifications to the kiosk,  
22 specifically to incorporate any information received  
23 from Dr. Lavery.

24 Do you have a memory of making any  
25 modifications to the kiosk in late 2008 or early 2009

1 as a consequence of any information received --

2 A. Yeah.

3 Q. -- from Dr. Lavery?

4 A. Absolutely.

5 Q. What did you do?

6 A. I have no idea.

7 Q. You believe you made modifications based  
8 on information from Dr. Lavery, but you don't know  
9 what you did?

10 A. Correct.

11 Q. How is it that you remember doing it,  
12 and you can't describe what you did?

13 A. It's real easy. I bet we made 100  
14 little modifications. And it could have been  
15 everything from change the button from green to  
16 orange. It could have been make sure the sign is --  
17 says free. Modify the hardware this way.

18 Dr. Lavery and I would talk sometimes  
19 every couple weeks; sometimes a couple months would go  
20 by. I didn't take detailed notes of who said what.  
21 We were just moving. We were moving fast. So I can't  
22 clearly determine who said what and what modifications  
23 were made.

24 Q. Understood. That's fair.

25 And these conversations that you

1 describe that you remember having with Dr. Lavery in  
2 which he made -- he gave information to you, these are  
3 conversations that took place in connection with  
4 Dr. Lavery's performance of the consulting agreement;  
5 is that correct?

6 A. Yeah.

7 Could I get copies of all this stuff,  
8 Joel?

9 Q. Sure. Not a problem.

10 A. I like the color ones.

11 Q. All right.

12 MR. INOSENICIO: Can I just say I wish  
13 every witness was this enthusiastic about being in a  
14 deposition.

15 THE DEPONENT: Dude, it's something I  
16 invented 20 years ago, and it's like --

17 MR. INOSENICIO: I get it. I get it.

18 THE DEPONENT: It's crazy, man. Like,  
19 you should see this shit. It's like 20 years ago. We  
20 were 15 years too early. This shit still should be  
21 out there right now.

22 MR. INOSENICIO: I agree with you. It  
23 should be.

24 THE DEPONENT: It will be. It's just we  
25 were too early.

1 A. That's right.

2 Q. -- right?

3 A. Yes.

4 Q. And that's not in any of the documents  
5 that you have in your patents or your application for  
6 patents? That's not anything that you were bringing  
7 to the table? That was his -- that was his  
8 contribution, right?

9 A. Correct.

10 Q. And he told you that before you signed  
11 any agreements with him relative to the contribution  
12 agreements or the consulting agreement, right?

13 A. Correct.

14 Q. The discussions that you had with  
15 Dr. Lavery after you entered into the letter of  
16 intent, those were all subject to the confidentiality,  
17 publicity, and nondisclosure provision in paragraph 10  
18 of Exhibit 22, right?

19 MR. BUSH: Object to form.

20 A. What paragraph? Sorry.

21 Q. (By Mr. Inosencio) Paragraph 10.

22 A. "Confidentiality, publicity, and  
23 nondisclosure." Correct. Yes.

24 Q. Okay. And so the whole idea of this  
25 letter of intent -- well, not the whole idea. But

1 part of the idea of this letter of intent is that the  
2 two of you wanted to share information and determine  
3 whether or not you can go forward as a team with you  
4 holding 90 percent of the company and him holding  
5 10 percent of the company in exchange for him  
6 providing you with information in addition to what's  
7 contained in the patent, right?

8 A. Correct.

9 Q. And those are his trade secrets and  
10 confidential information, and you treated it as such,  
11 right?

12 MR. BUSH: Object to form.

13 A. I don't know what that means.

14 Q. (By Mr. Inosencio) Well, you weren't  
15 taking his information and sharing it with other  
16 people that might potentially compete with --

17 A. No.

18 Q. -- SoloHealth, right?

19 A. No.

20 Q. That would certainly be detrimental to  
21 the business, right?

22 A. Yeah. Correct.

23 Q. So anyone that you talked to about these  
24 ideas that Dr. Lavery had would have been only in your  
25 circle of trust, also subject to some other type of



1 confidentiality restriction, right?

2 A. Most likely, yes.

3 Q. When you first met with Dr. Lavery, do  
4 you recall whether you told him that you had a  
5 patent -- or that you had applied for a patent?

6 A. I do.

7 Q. What did you -- what's your  
8 recollection?

9 A. That we applied for a patent. I shared  
10 with him the business plan that I had, and he got  
11 excited. He realized that I took it way farther than  
12 I think than he ever contemplated, and he was excited  
13 to be part of it.

14 Q. In a nutshell, what was your business  
15 plan relative to generating revenue with the visual  
16 acuity kiosk when you first met with Dr. Lavery?

17 A. Initially, it was to obtain referrals --  
18 referral fees from doctors and get large retailers,  
19 including Walmart and Luxottica, to pay for us to  
20 generate referrals or leads to them.

21 Q. Did he have a similar business model  
22 that he discussed with you --

23 A. No.

24 Q. -- at the time you were having these  
25 initial discussions?

1 A. No.

2 Q. He had a business model -- right? --  
3 relative to generating revenue from the kiosk?

4 A. What was it?

5 Q. Well, I'm asking you if you recall --

6 A. No.

7 Q. -- discussions with him relative to what  
8 he intended to do with the retinal scan aspect of the  
9 kiosk?

10 A. I think he contemplated charging to get  
11 your, you know, retinal scan, but that was never in my  
12 plans or business model. So if he did project that,  
13 it was more future state, and he realized that it  
14 would take significant funding and more time to  
15 develop what he wanted to.

16 Q. You said earlier, quote, "I had the  
17 impression that because it had been sitting there and  
18 no work had been done," and then you went on from  
19 there, and you were referring to Dr. Lavery's patent.

20 What did you mean by that?

21 A. I meant that -- what was the year that  
22 he had his patent filed?

23 Q. Oh, hold on. I'm looking at all of  
24 yours right now. I'd have to look back.

25 A. Hold on.

1 agreement that related to the capabilities of the  
2 kiosk that were beyond what you initially  
3 contemplated, correct?

4 A. Correct.

5 Q. He had ideas different from yours,  
6 right?

7 A. Correct.

8 Q. One of the ideas that Dr. Lavery had  
9 related to the internet connectivity aspect of the  
10 kiosk, right?

11 A. Correct.

12 Q. The kiosk that you developed, either on  
13 your own or in connection with these other vendors and  
14 with CIBA Vision, was more of a stand-alone that was  
15 not going to generate reports that would send data to  
16 SoloHealth, then potentially to be distributed on from  
17 there to medical providers; is that accurate?

18 A. That's not correct.

19 Q. Okay. Can you explain why it's not  
20 correct?

21 A. Yeah. We had a software provider early  
22 on called Netkey that was introduced to us from Kiosk  
23 Information Systems, and their software enabled us to  
24 remotely connect into the kiosk.

25 And it did two functions. One, it

1 provided realtime reports on if the kiosk was running  
2 or not, and we also could update the software  
3 remotely. And it enabled us to create a database  
4 where we could collect patient identifiable  
5 information and then transfer information to a doctor  
6 for referrals.

7 Q. But the information that was being  
8 gathered under that premise did not include anything  
9 for scanning for glaucoma, diabetes, anything of that  
10 nature like Dr. Lavery was suggesting; is that  
11 correct?

12 A. Correct.

13 Q. So that aspect of what he was offering  
14 was different from the concept that you had relative  
15 to the visual acuity?

16 A. That's correct.

17 MR. INOSENICIO: Okay. So what I'd like  
18 to do, Joel, is share my screen and discuss a couple  
19 different documents and make them exhibits that I can  
20 forward to you via email.

21 Are you opposed to that at all?

22 MR. BUSH: Yeah. Let me see if I can  
23 get into the Zoom so that I can see them.

24 THE DEPONENT: Are we still okay on the  
25 video? I'm pulling the screen closer.

1 Q. -- right?

2 A. -- correct.

3 Q. And eventually you settled on a letter  
4 of intent that reflected the requirement of  
5 confidentiality and nondisclosure, right?

6 A. Correct.

7 Q. And there's a reference in this  
8 document, Exhibit 41, to Kevin Lavery's IP, right?

9 A. Yes.

10 Q. And from an intellectual property  
11 standpoint, you understood that there was more to what  
12 Kevin Lavery was bringing to the table than just his  
13 patent, right?

14 A. I'm not sure what you're referring to.

15 Q. Well, he's sharing ideas with you  
16 relative to how he sees the kiosk rolling out,  
17 regardless of whether those ideas were implemented or  
18 approved at some point or funded at some point.

19 A. Sure.

20 Q. He was bringing other ideas to you,  
21 right?

22 A. He had tons of ideas.

23 Q. Let's go to 42.

24 (Exhibit Number 42 was marked.)

25 A. Okay.